IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.189 OF 2006

In

SUIT NO.111 OF 2006

Chandra Prabha Deswal & Anr. : Plaintiffs

V/s.

Dav Electronics & Electricals Pvt. Ltd. : Defendants

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Mr.Virag Tulzapurkar with Mr.Ramesh Gajria and Mr.Shyamsunder Iyer i/b. Gajria & Co., for the plaintiffs.

None present for the defendants.

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CORAM : S.A.BOBDE, J.

DATE : JANUARY 24, 2007.

P.C.

1. By this Notice of Motion, the plaintiffs seek an injunction restraining the defendant from using the mark 'DAV' or any other trade mark deceptively similar to the plaintiffs' trade mark which is also 'DAV'. The plaintiffs have approached this Court also for an injunction restraining the defendant from infringing their own registered trade mark bearing registration nos.849266 and 849267 dated 5.4.1999 in class 9 and 849268 and 849269

dated 5.4.1999 in class 11. The defendant, though served, has not appeared. The registered mark of the plaintiffs are the letters ‘DAV’. These letters are also registered as trade mark along with the symbol of lightening. The registration is for the following products:-

> "POWER/ENERGY METER SINGLE PHASE & THREE PHASE, BOTH ELECTRICAL AND ELECTRONIC, CONTROL PANEL ACCESSORIES, RELAYS, TRANSFORMERS CAPACITORS, ISOLATORS, SWITCHES, CONTROL PANELS, FUSE CARRIERS, SAMAPHORES, TEST TERMINAL BLOCKS, INDICATING LAMPS, PUSH BUTTONS, PUSH BUTTONS WITH NO & NC CONTACTS, PUSH BUTTONS STATIONS, NAUTRAL LINKS, OMB SWITCH (OPREATING SWITCH FOR BREKER), DISCREPANCY SWITCH VOLTAGE STABILIZERS, INVERTORS, UNINTERUPTABLE POWER SUPPLIERS, CONSTANT FREQUENCY SOURCES, SERVO CONTROL EQUIPMENT, VOLTAGE CONVERTORS, TESTING EQUIPMENTS, ELECRICAL AND ELECTRONIC GOODS, PARTS AND FITTINGS INCLUDED IN CLASS 9."

2. The defendants are manufacturers and traders who deal in the same product. The marks which they are using (exh.‘N’) are a perfect imitation of both the plaintiffs’ mark i.e. letters ‘DAV’only and with the representation

of the lightening. It is obvious from a bare look at the mark that there is a clear case of infringement and passing off of the plaintiffs' mark. It is pointed out on behalf of the plaintiffs by Mr.Tulzapurkar, the learned counsel, that the adoption by the defendants of these marks is dishonest and that the defendants have done so because the two Directors of the defendants' company one Mr.A.K.Agarwal and his wife Mrs.Anjana Agarwal earlier worked with the plaintiffs' firm. It is averred in the plaint that Mr.A.K.Agarwal worked as Marketing Consultant for the plaintiffs from 1.4.1999 to 31.3.2000 and Mrs.Anjana Agarwal was, in fact, a partner who relinquished her interest in the plaintiffs' firm on 31.3.1999 by a statement confirming the assignment of all her rights, title and assets in the firm's business back to the plaintiffs' firm. The confirmation said to have been signed by Mrs.Agarwal is at exh.'L-2'. As stated earlier, none of these allegations is controverted. The marks used by the defendants are identical to the plaintiffs' mark and is, therefore, this is a clear case of passing off an infringement.

3. In this view of the matter, there shall be an injunction in terms of prayer clauses (a) to (d).

4. Notice of Motion is made absolute in the aforesaid

terms.

S.A. BOBDE, J.